

EXHIBIT 1

HEARING

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

PHILLIPS, L.G., LCD CO., LTD,)
)
Plaintiffs,) C.A. No. 04-343(JJF)
)
v.)
)
TATUNG CO., TATUNG COMPANY OF)
AMERICA, INC., and VIEWSONIC)
CORPORATION,)
)
Defendants.)

Hearing of above matter taken pursuant to
notice before Renee A. Meyers, Registered Professional
Reporter and Notary Public, in the law offices of BLANK
ROME, LLP, 1201 North Market Street, Wilmington,
Delaware, on Tuesday, March 13, 2007, beginning at
approximately 5:05 p.m., there being present:

BEFORE: VINCENT J. POPPITI, SPECIAL MASTER

APPEARANCES:

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1 APPEARANCES (Continued):

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31 for Defendant Viewsonic Corporation

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1 going to be able to get resolution or get LPL to agree to
2 work these issues out with us even though we did follow
3 the procedure and they never filed their own motion.

4 MR. CHRISTENSON: Your Honor, we worked
5 out all of the topic issues with respect to LPL and we
6 have agreed to provide supplemental testimony on many of
7 those topics and we resolved the other topics.

8 We had also proposed a two-way deal for
9 everybody to defer some topics that we felt were more
10 suitable for experts. We offered that more than once and
11 the defendants would not agree with us on that. I think
12 now they may be willing to agree and we are still trying
13 to work with them on those discrete issues.

14 MR. MERIDETH: We did agree to that
15 proposal. I have sent you a couple of emails on that.
16 In fact, I sent you an email today reminding you that I
17 had sent you an email.

18 SPECIAL MASTER POPPITI: Counsel, what
19 you are doing for me is identifying the nature of the
20 problem that I have identified.

21 It is difficult, at best, to -- well,
22 it's difficult to focus on the substance of it all,
23 having been through the substance of it all, without
24 knowing the path forward in an appropriate filing with

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1 worked out or wouldn't be worked out. It really wasn't
2 until we were on with Your Honor during the first week of
3 deposition of Mr. Kim, LPL's witness, that it was made
4 abundantly clear, to all the parties, that a motion for
5 protective order would be the only vehicle by which a
6 witness could seek protection from testifying as to any
7 category. So, we proceeded immediately from there to try
8 to get the motion prepared and to make one additional
9 effort to meet and confer on these issues which is
10 reflected on that March 6th letter.

11 SPECIAL MASTER POPPITI: Any other
12 comments about that, then, please? Let's turn to -- we
13 will turn to substance.

14 MS. ROMAN: Thank you, Your Honor.

15 I think, perhaps, the easiest place to
16 start is with the topics that focus fundamentally on
17 invalidity and infringement contention and claim
18 construction, 10 and 11.

19 I will just state, for purposes of
20 Mr. Christenson, please feel free to chime in at any time
21 if you think that we have reached agreement on some of
22 these because I certainly don't want to waste anyone's
23 time.

24 But topics 10 and 11 would be the best

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1 place to start. As I understand it, these topics seek
2 the contentions concerning whether or not the
3 patents-in-suit are infringed by the products. That's
4 topic 10. Topic 11 seeks ViewSonic's position and
5 contention concerning whether the patents-in-suit are
6 unenforceable for any reason. And I think that the
7 parties are in agreement that the contentions,
8 themselves, are areas that should not be explored with
9 fact witnesses but should be reserved for expert
10 deposition. We have agreed to that limitation with
11 respect to not requiring LPL to produce a fact witness
12 for similar topics.

13 SPECIAL MASTER POPPITI: Okay.

14 MS. ROMAN: The continuation of topics
15 10 and 11 also states the factual basis responsive to
16 interrogatories and documents concerning those positions.
17 And I think that's where our last discussion has left off
18 as to whether or not we have to produce a fact witness
19 for that portion of the topic. And our difficulty is
20 trying to figure out how we parse out what is expert
21 testimony versus what is a fact witness testimony on
22 infringement and invalidity contentions relative to the
23 factual phase of the interrogatory responses and document
24 responses.

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1 SPECIAL MASTER POPPITI:

2 Mr. Christenson.

3 MR. CHRISTENSON: Yes, Your Honor. It
4 sounds like ViewSonic -- until recently, ViewSonic was
5 reserving the right to elect whether they would defer to
6 experts on contentions concerning validity and
7 infringement and it sounds like they have made the
8 election to defer to experts. Miss Roman stated
9 correctly that LPL had made that same election. And, so,
10 it sounds like that issue --

11 SPECIAL MASTER POPPITI: Doesn't that
12 resolve --

13 MR. CHRISTENSON: -- is moot; in other
14 words, resolved. As Ms. Roman said, however, the topics
15 go on to request information concerning the factual basis
16 and relevant documents, which I believe are appropriate
17 fact witness issues.

18 SPECIAL MASTER POPPITI: And that's what
19 she is talking about. She is saying that they are
20 having, correct me if I am wrong, you are having a
21 difficult time parsing, and I guess my -- I am having a
22 difficult time understanding why that's difficult.

23 It may not be the most efficient way to
24 do it, but you are not suggesting that the topic 10, if

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1 to be seeking the information regarding the conclusions
2 that are reached or the expert's testimony that's going
3 to come forth on those.

4 SPECIAL MASTER POPPITI: I don't -- that
5 would be virtually -- I mean, that would be crazy,
6 wouldn't it?

7 MR. CHRISTENSON: Yes, Your Honor. It
8 sounds to me like they are trying to suggest it can't be
9 a separate factual basis for a contention. We just
10 disagree with that fundamentally.

11 MS. ROMAN: I am actually suggesting
12 that we wouldn't have a fact witness that would be
13 putting forth that factual basis. But I understand, from
14 Mr. Ambrozy's point, I believe, that you are considering
15 that the factual basis can be as broad as what are the
16 components within our product and identifying those
17 components. Hearing that, I understand the distinction
18 you are making.

19 SPECIAL MASTER POPPITI: And with that
20 distinction, is it not going to depend, then, on what
21 questions are posed?

22 MS. ROMAN: Yes, Your Honor.

23 SPECIAL MASTER POPPITI: Okay.

24 MS. ROMAN: So I think that we all have

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1 a clear understanding with regard to topics 10 and 11,
2 and to the extent we are dealing with just the beginning
3 half of it that deals with the contentions, the ultimate
4 contentions, that that will be areas that ViewSonic is
5 going to rely on expert testimony for, and then if a fact
6 basis is something that's within the scope and knowledge
7 of the fact witness, then that will be provided.

8 SPECIAL MASTER POPPITI: Okay. Thank
9 you. Next, please.

10 MS. ROMAN: Your Honor, I think I can
11 short us through a few of the other topics if I might
12 identify them first and then explain why I am grouping
13 them together because they flow from what we just
14 discussed with respect to topics 10 and 11.

15 SPECIAL MASTER POPPITI: Yes, please.

16 MS. ROMAN: This would be topics, four
17 eight, nine, and 23.

18 SPECIAL MASTER POPPITI: Just a second.
19 Four, eight, nine, and 23, okay.

20 MS. ROMAN: Yes, Your Honor.

21 SPECIAL MASTER POPPITI: Thank you.

22 MS. ROMAN: Each of these topics,
23 because of their breath, also raise concern to the extent
24 that the testimony sought would be seeking not only fact.

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1 provide a witness. I think we have the right to test and
2 find out if there are unfavorable investigations or
3 inspections or testing that would benefit our client and
4 that we would want to offer.

5 SPECIAL MASTER POPPITI: You mean the
6 existence of them?

7 MR. CHRISTENSON: Yes, Your Honor, the
8 existence and nature of them, for example. So I don't
9 want to agree that they can just pick the ones that
10 should be discussed at the deposition. I don't think
11 that's appropriate. I think we should have the right to
12 explore that, and I would note, Your Honor, that the
13 topic is very similar to topic 24E that was noticed to
14 LPL and for which LPL provided a witness.

15 MS. ROMAN: Perhaps, then, there is a
16 better way of going about each of these topics.

17 SPECIAL MASTER POPPITI: Why don't you
18 propose that, then, please?

19 MS. ROMAN: Fundamentally, our concern
20 is that we don't want to have to have fact witnesses
21 testifying as to those areas for which expert testimony
22 is the appropriate testimony in Delaware, specifically,
23 infringement contentions, invalidity contentions, and,
24 also, this would fall with regards to claim construction,

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1 any of the topics that relate to claim construction
2 before the claim construction order has been issued.

3 And to the extent that all of the topics
4 that I have identified might sweep in some of that, it
5 won't matter because the parties have agreed that
6 questioning regarding the contention is improper until
7 expert testimony. And then we can provide the fact
8 witnesses and hope that, during the depositions, there is
9 no disagreement as to whether certain questioning goes to
10 the contentions or not.

11 SPECIAL MASTER POPPITI: Well, let me
12 suggest this: If you are able to forge that agreement,
13 and certainly understanding that questioning a fact
14 witness as to the factual basis of contentions may be
15 fair -- you would agree with that; correct?

16 MS. ROMAN: Yes. I understand that,
17 Your Honor.

18 SPECIAL MASTER POPPITI: If you forge
19 that agreement and you find yourself in a deposition
20 where the agreement is coming off track, in light of the
21 fact that I am dealing with a protective order and it is
22 not a function of my responding to an instruction not to
23 answer, it would be really to get you back on track with
24 your agreement, then I certainly would be available to do

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1 that.

2 But Mr. Christenson, what I am hearing,
3 it makes some sense, does it not?

4 MR. CHRISTENSON: Your Honor, it makes
5 some sense, but I have a concern that I would like to
6 express.

7 SPECIAL MASTER POPPITI: Sure.

8 MR. CHRISTENSON: That is that the
9 contention topics are three specific topics in our
10 notice, and those are topics eight, 10, and 11.

11 SPECIAL MASTER POPPITI: Just a second.

12 MR. CHRISTENSON: What I am
13 understanding Miss Roman to say is that they want to
14 treat, under some agreement that does not exist, as
15 covering contention issues, you know, the many, many
16 topics that they identified in the motion for protective
17 order.

18 MS. ROMAN: What I really want to do is
19 make sure that the protection that's provided for topics
20 eight, 10, and 11 isn't circumvented by virtue of the
21 breath of another topic being brought on us to sweep in
22 that information. That's all I am trying to make sure
23 of.

24 MR. CHRISTENSON: I think it's, to the

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1 extent we ask on a contention issue and we have agreed
2 that contention issue will be deferred to experts, we
3 can't, obviously, use a different topic number to get the
4 contention issue resolved by a fact witness. So, I don't
5 think that's going to be a problem.

6 I am just trying to avoid a situation
7 where there is some suggestion that some of these topics,
8 other than eight, 10, and 11, are somehow part of an
9 agreement.

10 MS. ROMAN: Perhaps also adding topic
11 nine to the extent it pertains to specific defenses of
12 non-infringement -- well, you are saying that's not a
13 specific contention?

14 MR. CHRISTENSON: Right. Fact nine is
15 the basis, so, again, I think that's seeking factual
16 information.

17 MR. AMBROZY: If we were to ask the
18 witnesses about what they knew existed before the patents
19 were filed, what technology they knew before the patents
20 were filed, I think that's a totally proper factual
21 inquiry, although it might -- it might be swept under
22 invalidity, it still is not part of the invalidity
23 contention. Even if it was, it still is the fact
24 witness' or ViewSonic's knowledge of a fact in existence,

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1 so I think that's a proper topic.

2 MS. ROMAN: Right. I agree with that.

3 Whereas, the contrary, which would be: Why do you
4 contend that this particular reference is prior art?

5 SPECIAL MASTER POPPITI: That's
6 different.

7 MR. CHRISTENSON: Right. I agree, Your
8 Honor.

9 SPECIAL MASTER POPPITI: That's
10 completely different. It sounds to me like you are both
11 on the same page.

12 MS. ROMAN: Yes. I think that that
13 works, and if Mr. Christenson is willing to go with that
14 understanding as he just voiced it and we just voiced it,
15 then I will as well. It would be the contentions are
16 topics -- what was it -- eight, 10, and 11?

17 SPECIAL MASTER POPPITI: Eight, 10, and
18 11.

19 MS. ROMAN: For which we could rely on
20 expert testimony except to the extent that 10 and 11
21 seeks factual basis as we discussed.

22 SPECIAL MASTER POPPITI: Yes.

23 MS. ROMAN: And that, to the extent that
24 there is any disagreement during the depositions as to

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1 whether or not questioning is going astray from this
2 agreement, then we can seek Your Honor's assistance.

3 SPECIAL MASTER POPPITI: Yes.

4 MR. CHRISTENSON: That's fine, Your
5 Honor.

6 SPECIAL MASTER POPPITI: Okay.

7 MR. MERIDETH: I would agree with that
8 also as well on behalf of the Tatung defendants.

9 SPECIAL MASTER POPPITI: Thanks,
10 Mr. Merideth.

11 MS. ROMAN: Sorry. For the topics that
12 related to -- or what we believed required claim
13 construction in order to properly respond to questioning
14 of -- under them, that was topics, I believe, one, five,
15 27, and 29.

16 SPECIAL MASTER POPPITI: Okay. Go
17 ahead, please. By "one," that is the newly designated
18 one?

19 MS. ROMAN: Yes, Your Honor.

20 SPECIAL MASTER POPPITI: Okay.

21 MS. ROMAN: I believe that the terms
22 that are included in it are flat panel display, flat
23 panel display device, and housing, although flat panel
24 display, I think we might actually have an agreed

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1 construction on, somebody can correct me if I am wrong.

2 MR. CHRISTENSON: We do.

3 MS. ROMAN: So, flat panel display
4 device in topic No. 1. I believe that's also in topic
5 No. 5.

6 SPECIAL MASTER POPPITI: Just one second
7 to make sure I am on the same page with you. I
8 understand there is an agreement, but I am looking at --

9 MR. CHRISTENSON: Your Honor, I think
10 there was a little misunderstanding. When you said "new
11 topic one," actually, that would be supplemental topic
12 31.

13 SPECIAL MASTER POPPITI: Thank you.

14 MR. CHRISTENSON: I think Ms. Roman is
15 working from the original ordering.

16 SPECIAL MASTER POPPITI: Thank you.
17 Then that's why I was not reading the right language. Go
18 ahead, please.

19 MS. ROMAN: So, topic No. 1 includes the
20 language, quote, Seeking the structure of the visual
21 display products, the method of assembling visual display
22 products, including the structure and method of
23 assembling the flat panel display and flat panel display
24 device contained in each of those visual display

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1 products. The flat panel display device is one of the
2 terms that has been raised for construction. And to the
3 extent that this topic would require a witness to respond
4 to questions that involve proposed construction, I think
5 it's premature, as Your Honor has previously indicated.

6 Otherwise, other than that --

7 SPECIAL MASTER POPPITI: I am still
8 flipping through documents here to look at -- to look and
9 see where No. 1 is because it is not No. 1 -- what number
10 was used to -- in the re-numbering?

11 MS. ROMAN: I think it was 31.

12 SPECIAL MASTER POPPITI: And that's,
13 perhaps if you could tell me what submission and what
14 exhibit it's under? I am looking at an LPL submission,
15 and I do not have --

16 MS. ROMAN: Your Honor, I believe the
17 topic No. 1 I am referring to is actually the original
18 topic No. 1.

19 SPECIAL MASTER POPPITI: Okay. It is.
20 It begins, "The structure of the visual display product"?

21 MS. ROMAN: Yes, Your Honor. I pointed
22 out flat panel display device is one of the terms that
23 has been breached for construction. It also includes
24 fastening parts, fastening holes and frames involved in

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1 breach for construction.

2 Separate and apart from --

3 SPECIAL MASTER POPPITI: Let me hear a
4 response with respect to topic No. 1.

5 MR. AMBROZY: Our position is as long as
6 the terms, if they are in the ordinary course of what one
7 ordinarily skilled would understand those terms and they
8 are proper, and also as the terms relate to products that
9 are sold by the defendants, we think the terms are proper
10 to be used, and in that -- they basically describe the
11 inventions, therefore, allows us to tie the inventions to
12 the accused products, there is no other way, Your Honor,
13 to really walk through an accused product without having
14 some sort of identification of the elements within that
15 product.

16 SPECIAL MASTER POPPITI: I don't see any
17 way that that can be done and I expect that the witness
18 is not being deposed for purposes of having that witness
19 do a -- or commit the party to a claim, a definition of a
20 claim or a view as to what your ultimate position with
21 respect to the construction of the claim is.

22 MR. AMBROZY: That's correct, Your
23 Honor.

24 MS. ROMAN: I appreciate that

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1 clarification, Your Honor, because that's precisely what
2 I proposed last to Mr. Christenson.

3 SPECIAL MASTER POPPITI: That's what
4 should be going on, I would expect, because, otherwise,
5 you are all going to be using sign language during the
6 course of these depositions.

7 MS. ROMAN: It could actually be more
8 effective at times, perhaps.

9 SPECIAL MASTER POPPITI: You may be
10 right.

11 MS. ROMAN: I simply wanted
12 clarification on that, and it sounds like we are all in
13 accord that as long as those topics aren't seeking a
14 witness to testify regarding the interpretation of those
15 claim terms or committing to an interpretation, then that
16 clarifies the concern.

17 SPECIAL MASTER POPPITI:
18 Mr. Christenson?

19 MR. CHRISTENSON: Yes, Your Honor. I
20 think that -- that, as Mr. Ambrozy said, that's not our
21 intent. I am not sure what communication Ms. Roman was
22 referring to with me.

23 MS. ROMAN: It was the one I sent to you
24 yesterday, Cass, regarding topics 1, 27, and 29.

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1 MR. CHRISTENSON: I don't think that
2 issue was raised. We are not trying to make the fact
3 witness into an expert, Your Honor.

4 SPECIAL MASTER POPPITI: Thank you.

5 MS. ROMAN: Can we resolve
6 clarification, perhaps, then, on topic five?

7 SPECIAL MASTER POPPITI: Yes. Any and
8 all technical, economic, or other, etcetera?

9 MS. ROMAN: Yes, Your Honor, that's the
10 correct topic.

11 SPECIAL MASTER POPPITI: Okay.

12 MS. ROMAN: And perhaps this is just
13 different interpretations of it, but the way I read topic
14 five, it asks for any of that information concerning the
15 structures and methods of assembly claimed in the
16 patents-in-suit and any comparisons or analysis conducted
17 by you or for you concerning the mounting of flat panel
18 displays or flat panel display devices used in visual
19 display products, etcetera.

20 We read the entire topic No. 5, or I
21 understood it to be seeking mounting structures and
22 methods of assembly and comparisons or analysis regarding
23 those mounting structures or assemblies that are claimed
24 in the patents-in-suit, and I think that goes directly to

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1 the claim construction.

2 MR. AMBROZY: Your Honor, for the same
3 reason that we believe the terms were proper in topic
4 one, they are proper in topic five. Again, it's just to
5 point the defendants so they can properly prepare their
6 witnesses as to what the witness should be able to
7 testify on, which is the mounting structures and the
8 methods of assembly.

9 MR. CHRISTENSON: I specifically
10 informed Ms. Roman of that, that that's our intent, and
11 the fact that there may be a reference in there to the
12 claimed invention in the patent wasn't -- was not
13 intended to be a result-oriented analysis.

14 There are topics in the ViewSonic's
15 notice that also refer to what's claimed in the patents;
16 for example, topic 23A. But, in any event, I clarified
17 for Ms. Roman that our intent is to focus, as Mr. Ambrozy
18 said, on the relevant structures and methods of assembly.
19 There are many other structures and assembly-related
20 issues that are not at issue in this case, so we are not
21 trying to make it that broad. We are trying to make it
22 relevant to the types of structures and assembly-related
23 facts that are relevant to these claims.

24 MS. ROMAN: I guess my concern was that

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1 it's speaking of technical, economic, or other advantages
2 or benefits or disadvantages concerning the inventions,
3 concerning the structure, the methods of assembly claimed
4 in the patents-in-suit. Until we have got definition as
5 to what the invention as claimed in the patents-in-suit
6 are, how can our witnesses testify about the technical,
7 economic, or other advantages of those?

8 MR. AMBROZY: It's our opinion that
9 those witnesses would be able to testify because they are
10 the 30(b)(6) and/or fact witnesses that work at
11 ViewSonic. They can testify about the structure used in
12 the various devices that they sell.

13 MR. CHRISTENSON: Your Honor, do you
14 have ViewSonic's deposition topics in front of you?

15 SPECIAL MASTER POPPITI: If you -- I
16 know that you referenced them, so if you point me to one
17 of your exhibits, that would be helpful.

18 MR. CHRISTENSON: Yes, Your Honor. I
19 believe that in our -- I am just looking to see if I can
20 find the copy of the notices -- I think it was in our
21 March 2nd -- I am sorry, our March 12th letter, I believe
22 it was maybe Exhibits 5 and 6, perhaps -- I believe
23 Exhibits 3, 4, 5, and 6 to our March 12 letter include
24 the four deposition notices from ViewSonic.